

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICIA STOVALL on behalf of)	
RANDIE WILSON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:00CV1307 DJS
)	(FRB)
KENNETH S. APFEL, Commissioner)	
of Social Security, ¹)	
)	
Defendant.)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This cause is on appeal from an adverse ruling of the Social Security Administration. All pretrial matters were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) for appropriate disposition.

I. Procedural History

Randie Wilson was a minor who, at the time of application and determination, had not yet attained eighteen years of age. On October 16, 1997, plaintiff Patricia Stovall, Randie's mother, filed an application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381, et seq., on Randie's behalf. (Tr. 85-87.) Plaintiff alleged that Randie

¹On March 29, 2001, Larry G. Massanari became the Acting Commissioner of Social Security. As such, Larry G. Massanari should be substituted for Commissioner Kenneth S. Apfel as the defendant in this cause. Rule 25(d)(1), Federal Rules of Civil Procedure.

became disabled on January 1, 1997. (Tr. 85.) Plaintiff's application was denied initially (Tr. 71, 73-75) and on reconsideration (Tr. 72, 78-81).

On July 14, 1998, a hearing was held before an Administrative Law Judge (ALJ). Plaintiff Patricia Stovall testified at the hearing and was represented by counsel. Plaintiff's husband also testified at the hearing. (Tr. 32-70.) On November 27, 1998, the ALJ issued a decision denying plaintiff's claim for benefits. (Tr. 12-23.) On June 20, 2000, the Appeals Council denied plaintiff's request for review of the ALJ's decision. (Tr. 5-6.) The ALJ's decision is thus the final decision of the Commissioner. 42 U.S.C. § 405(g).

II. Evidence Before the ALJ

A. Plaintiff Patricia Stovall's Testimony

At the time of the hearing, Randie Wilson was fifteen years of age. (Tr. 37.) Randie lived at home with his mother, step-father and twelve-year-old brother, and had been attending Career Academy in the special school district since February 1998. (Tr. 36-38.) Ms. Stovall receives \$260.00 each month in child support from the children's biological father. (Tr. 45-46.) Ms. Stovall also receives \$377.00 each month in Supplemental Security Income for her other son, Rodney. Ms. Stovall testified that she is unable to work outside the home. (Tr. 46.)

Ms. Stovall testified that Randie was involved in the juvenile justice system in 1997 because of behavioral problems during school. (Tr. 46-47.) Ms. Stovall had enrolled Randie in the Youth-in-Need program which was designed for children who had problems attending school. (Tr. 47.) Ms. Stovall testified that Randie was uncooperative with the program. (Tr. 48.)

Ms. Stovall testified that Randie had attended Fanning Middle School and had fifty days of tardiness or absences. Ms. Stovall testified that Randie did not want to go to school and skipped classes. Ms. Stovall testified that Randie had been sent home and was suspended from Fanning Middle School on account of his anger and belligerent behavior toward the teachers, including throwing things at them. (Tr. 61.) Ms. Stovall testified that Randie had been suspended for three days from Career Academy on one occasion on account of an altercation with other children. (Tr. 38.)

As to Randie's daily behavior, Ms. Stovall testified that Randie "tears up [the] house." (Tr. 48.) Randie has broken lights. Randie recently broke his hand when he became angry with another boy and hit him. Randie throws things and has put holes in the walls. Randie throws his brother in attempts to injure him. Ms. Stovall testified that she has had to call the police several times on account of Randie's behavior. (Tr. 48.) Ms. Stovall testified that Randie does not have a regular bedtime on account of

his fighting to resist going to bed. Ms. Stovall testified that Randie wakes in the morning around 6:00 or 7:00 a.m. with anger, and then "it starts over again." (Tr. 49, 57.) Ms. Stovall testified that Randie's behavioral outbursts occur approximately every three or four days. (Tr. 49.) On the other days, Ms. Stovall testified that Randie's behavior is similar to that displayed at the hearing. (Tr. 64.) When experiencing a good day, Ms. Stovall testified that Randie likes to play basketball. (Tr. 49.) Ms. Stovall testified that Randie has no friends other than two boys who are bad influences on him. (Tr. 50-51.) Ms. Stovall testified that Randie used to play ball regularly at a church-sponsored neighborhood center, but that the center has since closed. (Tr. 52.) Ms. Stovall testified that she does not enroll Randie in recreational or children's programs inasmuch as he would not stay enrolled because of his unstable behavior. (Tr. 53-54.)

Ms. Stovall testified that on a school day, Randie wakes up, fights with his brother, and then eats breakfast. (Tr. 57.) Ms. Stovall testified that Randie then plays television video games which usually cause him to become angry and throw things. Ms. Stovall testified that she then puts the video games away, which causes Randie to sit and mope, and then become angry again. (Tr. 58.) Ms. Stovall testified that Randie likes to read sports books and to watch sports and movies on television. (Tr. 59.) Ms. Stovall testified that she takes Randie to the library every two

weeks to check out books and movies. (Tr. 59-60.) Ms. Stovall testified that Randie takes a bus to and from school. (Tr. 61.) Ms. Stovall testified that Randie dresses himself but that they work together to choose his clothes. (Tr. 63.) Ms. Stovall testified that it is difficult to get Randie to perform any duties at home, but that he sometimes cleans his room. (Tr. 63-64.)

Ms. Stovall testified that Randie's current medications include Tenex, Serzone and Risperdal. (Tr. 39-40.) Ms. Stovall testified that Randie refuses to take Risperdal because of the way it makes him feel, but that his doctor, Dr. Surratt, has advised that the medication is necessary to prevent Randie's outbursts and may have to be administered by injection. (Tr. 40.) Ms. Stovall testified that Randie has been prescribed Risperdal since May 1998, and that when Randie takes the medication he becomes quiet and not so quick-tempered. (Tr. 41.) Ms. Stovall testified that Randie has been prescribed Serzone since June 22, 1998, the date upon which Randie was admitted to St. Anthony's Hospital after a "bad spell" during which he beat his brother and threatened his mother and step-father with a knife saying he was going to kill them. (Tr. 41-42.) Ms. Stovall testified that Randie was at St. Anthony's for four days and was treated by Dr. Eyerman. (Tr. 62-63.)

Ms. Stovall testified that Randie undergoes counseling every week at St. Louis Regional Mental Health Center. (Tr. 42.)

Randie became eligible for such counseling in March 1998 upon Ms. Stovall's interview with Regional. (Tr. 44-45.) Ms. Stovall testified that Randie had previously undergone counseling at Edgewood Children's Center in 1997, Catholic Youth Services in 1996 and 1997, and Providence until Randie's enrollment at Regional. (Tr. 54-56.) Ms. Stovall testified that she delayed seeking psychiatric assistance for Randie on account of lack of insurance and Medicaid. (Tr. 55.)

Ms. Stovall testified that in 1989, her daughter was struck by a car and was killed, and that Randie witnessed the accident. (Tr. 36, 49.) Randie was approximately six years old at the time. Ms. Stovall testified that she became involved in drugs subsequent to her daughter's death and that Randie was removed from her home in 1994 and went to live with his biological father. (Tr. 36-37.) Ms. Stovall testified that she has been drug-free for over three years and regained custody of her children in 1995 after their father had "put [them] out." (Tr. 37.)

The ALJ observed Randie to be uncooperative during the hearing. (Tr. 35, 36.)

B. Testimony of Dennis Stovall

Mr. Stovall testified that he met Patricia Stovall in 1994 and met Randie one year later in 1995. Dennis and Patricia Stovall married in 1996. (Tr. 65.)

Mr. Stovall testified that he and Patricia have scratches

on their arms and legs from Randie, and that he is afraid to go to work inasmuch as Randie may cause injury to Patricia in his absence. Mr. Stovall testified that Randie has pulled a knife on Patricia and has taken swings at Patricia. (Tr. 65.) Mr. Stovall testified that he called the police six or seven times during the previous year on account of Randie's violent behavior. Mr. Stovall testified that Randie gets upset with everyone and will listen to no one. (Tr. 66.) Mr. Stovall testified that Randie appears to "snap" at which time he calls Patricia names and engages in behavior which causes Mr. Stovall to attempt to restrain him; but that within two hours, normal behavior resumes as if no episode had occurred. (Tr. 67-68.)

III. Medical, Counselor and School Records

On March 12, 1996, Randie and his family agreed to participate in the Catholic Services for Children and Youth (CSCY) program and to implement methods to improve Randie's relationship with his mother and communication in the family. June 12, 1996, was set as the date for achievement and/or further review. (Tr. 216-17.) On April 9, 1996, CSCY noted that Randie had repeated kindergarten twice and would graduate from middle school if his grades and behavior improved. It was noted that Randie had never received psychiatric or psychological services. (Tr. 218.)

Randie failed to keep his appointment with CSCY on July 2, 1996. On July 16, 1996, CSCY noted the impact of the training

during the session to be poor. It was further noted, however, that there seemed to be progress as a result of counseling and it was recommended that counseling continue. (Tr. 221.) In an assessment update dated July 16, 1996, it was noted that Randie had been having trouble at school, had difficulties following directions at home, and was fighting with his brother. (Tr. 225.) It was noted that Randie's behavior had deteriorated since the last update, and that his temper tantrums at home had become more intense. (Tr. 226.) Randie's current Global Assessment of Functioning (GAF) was noted to be 61. (Tr. 225.) October 17, 1996, was set as the date for achievement and/or further review. (Tr. 223-24.)

A counseling session at CSCY on July 23, 1996, had a positive impact upon Randie, but it was noted that there was little progress. The impact of the counseling session on July 30, 1996, was poor; little progress was noted; and further counseling was recommended. (Tr. 222.)

An updated service agreement was completed with CSCY on November 14, 1996, and set February 14, 1997, as the date for achievement and/or further review. (Tr. 229.)

On November 20, 1996, Fanning Middle School referred Randie to the St. Louis Caring Communities Program (SLCC) on account of Randie's disruptive behavior in class, poor grades and poor attendance. Fanning reported to SLCC that Randie was "[i]nvolved in vandalism in his community (breaking windows and

cutting tires); stealing in retail stores; hangs out [with] peers who deals [sic] drugs." (Tr. 234.)

On November 26, 1996, SLCC met with Randie and his mother. Randie's mother reported that she believed Randie to resent her for not pursuing and punishing the driver of the car who killed his sister. It was also reported that Randie was angry that his biological father did not keep in touch with him. SLCC noted Randie to have been in foster care on account of his mother's drug and alcohol addiction. (Tr. 238.) Randie's case was assigned to the Substance Abuse Case Management unit and homework assistance was recommended. (Tr. 239.)

Ed Newbern of SLCC was assigned to Randie's case and contacted Randie's mother on January 9, 1997. Randie's mother requested that Randie be tested for special education services. Mr. Newbern advised Randie's mother that the need for such services would be determined by Randie's teachers. (Tr. 239.)

On January 31, 1997, Mr. Newbern met with Randie and discussed his tardiness at school, to which Randie responded that he depended upon his mother to wake him. Randie met in group session on February 3, 1997, and showed little insight as to career plans, although he recognized the importance of getting good grades. On February 6, 1997, Mr. Newbern met with Randie and his mother in their home and discussed time management. Randie's mother expressed frustration at Randie's procrastination in the

mornings getting ready for school, including ironing for up to two hours to get his clothes ready. Randie's mother reported that she has restrained from punishing Randie for such behavior. Mr. Newbern counseled Randie as to setting schedules and adhering to them and advised Randie that he would suffer consequences from his mother if he failed to do so. (Tr. 241.)

Randie participated in group session at SLCC on February 10, 1997, at which the discussion involved "Feelings and Concerns." Mr. Newbern noted Randie's inability to express himself further suppressed his true feelings. (Tr. 241-42.) On February 13, 1997, Mr. Newbern contacted Randie's mother who reported that Randie continued in his procrastinating behavior despite schedules and consequences for his actions. (Tr. 242.)

On February 14, 1997, Mr. Newbern was required to make a "sudden home visit" on account of Randie's defiant behavior. (Tr. 242.) Upon Mr. Newbern's arrival, Randie became compliant and was ready for school. Mr. Newbern took Randie to school and delivered him to homeroom. On February 18, 1997, Randie received a one-day suspension for his unauthorized presence in the hallway at school, and was out of school on February 19 on account of such suspension. On February 20, 1997, Randie failed to appear at school. On February 20 and 21, 1997, Mr. Newbern received no answer upon his attempts to contact Randie at home. (Tr. 242-43.) Mr. Newbern visited Randie and his mother at home during the afternoon of

February 21, 1997, at which time Randie's mother reported that she misunderstood the duration of Randie's suspension from school. Randie's mother was advised that she was required to return to school with Randie to readmit him. Mr. Newbern drove Randie and his mother to school on February 24, 1997. Randie's mother requested help for Randie's behavior due to feelings of stress. Mr. Newbern referred Randie's mother to Youth-in-Need in St. Charles, Missouri. (Tr. 243.)

Group session with Mr. Newbern on February 24, 1997, involved discussions relating to gangs. Mr. Newbern noted Randie to know the language and signals of gangs but that Randie stated he was not affiliated with gangs. Randie was able to discuss how he feels when he loses friends in gang activity but felt that "that's the way things are in life." (Tr. 243.) In group session on February 26, 1997, Mr. Newbern noted Randie to feel the need to retaliate when necessary regardless of the consequences. Randie was noted to have poor insight. (Tr. 243.)

During a home visit on February 28, 1997, Mr. Newbern reported Randie not to have made any progress toward being responsible and improving his behavior. On March 3, 1997, Mr. Newbern noted Randie's attitude to have worsened. Randie reported that he does not like school. During group session, Randie was able to express his knowledge and feelings on the topic of drugs and stated that he experiences feelings of abandonment and anger on

account of his mother's previous experience with drugs. (Tr. 244.)

On March 5, 1997, Mr. Newbern made another emergency home visit on account of Randie's defiance in getting ready for school. Randie refused to get ready for school inasmuch as there was no starch for his jeans. Mr. Newbern took Randie to school. (Tr. 244.) Randie was absent from school on March 6, 1997, due to Randie's mother's failure to set the alarm. (Tr. 245.)

On March 7, 1997, Randie was admitted to Youth-in-Need (YIN) for a two-week, in-house treatment program. (Tr. 245-46.) During group session on March 7, 1997, Randie displayed unusual behavior and shouted during the session. Mr. Newbern noted Randie to defy staff demands and rules. Greg Rideout, a family therapist at YIN noted Randie to function at a third-grade level rather than a sixth-grade level. When Randie's family departed from the facility, Randie demanded money and cursed and stomped his feet when it was denied. (Tr. 246.) On March 10, 1997, Mr. Rideout explained to Mr. Newbern that Randie had participated in therapeutic intervention on a weekend pass due to Randie's worsened behavior, and that the weekend went well. On March 12, 1997, Mr. Rideout requested a meeting with Randie's family to discuss early discharge on account of Randie's continued non-compliance with program guidelines, refusal to attend school, and escalating negative comments and behavior. (Tr. 247.) Randie was discharged from YIN on March 13, 1997, and was referred to other programs.

Randie returned home that same date and returned to school on March 17, 1997. (Tr. 248.) YIN's discharge summary noted that Randie's situation appeared "to be a very difficult case for which to determine appropriate treatment" inasmuch as Randie's "obstinate behavior at home is causing him to fall further and further behind at school because he refuses to go." It was further noted that Randie "continues to fail to learn how to operate within a system of structure and limits, and such problems at home place him at high risk for being lost to the streets." (Tr. 185.) It was opined that Randie may need long-term placement services. (Tr. 185.)

On March 19, 1997, Mr. Newbern noted that Randie's behavior at home had improved and that he was taking responsibility for fulfilling his household chores. (Tr. 249.)

Mr. Newbern noted Randie to be absent from school on April 1, 1997. Randie's mother reported that Randie refused to go to school because he believed he needed new clothes. On April 7, 1997, Randie was absent from group session. (Tr. 250.) On April 8, 1997, Randie refused to engage in any communication with Mr. Newbern during their one-on-one counseling session. (Tr. 251.)

On April 11, 1997, SLCC noted that Randie's behavior had improved tremendously in the classroom and that his daily attendance had improved although he continued to be tardy on account of oversleeping and missing the bus. Randie was noted to

have a nonchalant attitude toward obeying rules and guidelines set at home and at school. (Tr. 236.) It was recommended that summer employment be found for Randie so that he may learn pre-adult responsibilities. Strategies were also developed to assist Randie to remain drug-free. (Tr. 236-37.)

On April 18, 1997, Randie reported to Mr. Newbern his reluctance to participate in group sessions because he believed his feelings not to be everyone else's business. Mr. Newbern agreed to weekly one-on-one counseling sessions. (Tr. 251.)

The family was absent from home for their April 28, 1997, home visit from Mr. Newbern. Randie did not feel like talking during his one-on-one session May 1, 1997. On May 8, 1997, Randie inquired of Mr. Newbern as to summer school on account of being advised that he would not likely pass from his present grade. (Tr. 252.)

In the 1996-97 school year at Fanning Middle School, Randie received one C, two D's and an F in Reading; two C's and two F's in Mathematics; one D and three F's in Social Studies; four F's in Science; one C- and one C+ in Home Economics; two A's in Music (vocal); and one A and one C in Physical Education. (Tr. 231-33.) It was noted that Randie's promotion to the next grade was dependent upon successful academic achievement during summer school. (Tr. 232.)

Randie was absent from counseling on May 20 and June 2,

1997. (Tr. 253.) Mr. Newbern's attempts to contact Randie at home on June 10 and 11, 1997, were unsuccessful. On June 16, 1997, Mr. Newbern informed Randie that he was required to attend summer school to which Randie responded in a defensive and nonchalant manner. Randie did not appear for his first day of summer school on June 23, 1997, nor did anyone answer the door to Randie's home for Mr. Newbern's home visit that same date. (Tr. 254.) On June 24, 1997, Randie's mother informed Mr. Newbern that she was not going to force Randie to attend summer school because she was frustrated with toiling with Randie. Mr. Newbern noted Randie to have missed an entire week of summer school. (Tr. 255.)

In July 1997, Mr. Newbern noted Randie to have missed various days of summer school. Randie had reported that the work was too difficult for him. In addition, Mr. Newbern learned that on one occasion, Randie had skipped school, went downtown, and was arrested as an accessory to shoplifting. (Tr. 256-57.) At the conclusion of summer school, it was determined to socially promote Randie to the seventh grade, despite Randie's numerous absences from summer school. (Tr. 257.)

On August 25, 1997, Mr. Newbern resigned and noted Randie's case to remain active for further management. (Tr. 257.)

On September 3, 1997, counselor Delphia White from SLCC received a report from Randie's teachers that Randie was late in his arrival at school. Ms. White gathered homework from Randie's

teachers and advised Randie to come to her office to pick up the homework before he went home. Randie failed to appear. (Tr. 259.)

Randie and his mother met with Ms. White on October 2, 1997, regarding an altercation in which Randie allegedly was involved at school with other boys. Randie disclaimed any responsibility and stated that other boys were responsible for the beating of another boy. (Tr. 257-58.) Ms. White indicated she wished to meet with Randie further to discuss his failure to do his homework and attend school. (Tr. 258.) Randie continued to be late to school, and Randie's mother reported to Ms. White that Randie refused to do his homework and became rebellious when asked to do so. (Tr. 259-61.) Randie's mother informed Ms. White that she was "at the point of giving up." (Tr. 260.) Randy continued to receive Discipline Reports from school for inappropriate behavior. (Tr. 123-24.)

On November 10, 1997, a teacher from Fanning Middle School completed a teacher questionnaire for disability determinations. (Tr. 111-13.) It was noted that Randie was not in special education classes. It was noted that Randie never sat down long enough or had enough regular attendance to perform classroom tasks. Assignments were never attempted. It was reported that Randie seemed to socialize well, had friends, and was rambunctious and playful, but communicated poorly with adults. (Tr. 111.) The teacher concluded: "I worked very hard with Randie every way I

knew how to move him away from distractions, help him, reexplain, get him started with assignments. He never, ever, ever made an attempt to try." (Tr. 113.) During the first two quarters in the 1997-98 school year at Fanning Middle School, Randie failed every course. (Tr. 120-21.)

Randie underwent psychological evaluation at St. Louis University on November 12, 1997, for disability determinations. (Tr. 187-93.) The examiner noted that despite Randie's mother's reports of noncompliance at home and school, Randie was largely compliant with the assessment. Randie was administered the WISC-III intelligence scale during which Randie's motivation appeared to waver and he gave nonchalant responses, not seeming to care about his inappropriate answers or actions. (Tr. 188.) When advised that the examination was nearly concluded, Randie's motivation appeared to improve. Randie appeared to enjoy some performance subtests. Randie's attention and concentration appeared adequate. It was noted that the variations in Randie's motivation and interest would suggest that the results of the examination were not a valid indicator of Randie's current level of intellectual functioning. (Tr. 188-89.) Randie's IQ score on the verbal portion of the exam was 62. On the performance portion of the exam, Randie received a score of 66. Randie had an overall IQ score of 61, which placed him in the range of Intellectually Deficient. (Tr. 189, 191.) Mental status examination showed

Randie's thought processes to be largely intact. The examiner noted that despite Randie's mother's reports of Randie rarely talking and of being needy, demanding and belligerent, little of such behavior was observed during the examination. Randie denied any hallucinations and delusions. Randie's mother reported Randie to experience mood swings wavering between being withdrawn and explosions of anger. No anger was observed during the examination. (Tr. 189.) It was noted that Randie's judgment appeared to be limited but that his memory was intact. Randie's persistence in performing tasks was noted to be quite good despite his concentration problems. (Tr. 190.) The examiner noted that the mother's reports of Randie's behavior would support a finding of oppositional defiant disorder. The results of the assessment revealed possible depressed mood in addition to irritability, sleep difficulties, problems in concentration, and sequelae associated with childhood trauma. It was opined, however, that the evidence was not strong enough to diagnose a mood disorder or post-trauma disorder. (Tr. 191.) It was finally opined that although the WISC-III scores would meet the criteria for mild mental retardation, Randie's varied motivation and interest in the tasks would suggest such assessment not to be valid. (Tr. 191-92.) It was also noted that Randie displayed no apparent deficits in adaptive functioning, with such deficits being required for a diagnosis of mental retardation. As such, it was determined that

a diagnosis of mild mental retardation was not warranted. Randie was diagnosed with oppositional defiant disorder. (Tr. 192.)

On December 1, 1997, Dr. Margaret Anpacker reviewed Randie's medical records for disability determinations and determined Randie's impairments to be severe but that they did not meet, medically equal or functionally equal the severity of a Social Security Disability Listing. (Tr. 171-74.) Dr. Anpacker determined Randie to have marked limitations in social functioning and less than marked limitations in cognitive/communicative functioning; personal functioning; and concentration, persistence or pace. (Tr. 173.) Dr. Anpacker explained that school records showed that Randie never tried at school, so that there was "not much to evaluate." (Tr. 174.) Dr. Anpacker noted that Randie's cognitive processes appeared intact and that Randie's mother's allegations of Randie being needy, demanding and belligerent were not noted in the records. Dr. Anpacker noted Randie's WISC-III IQ scores of 62/66/61 not to be valid on account of Randie's decreased motivation and interest. Dr. Anpacker supported the diagnosis of oppositional defiant disorder but opined that any diagnosis of mental retardation was not warranted. (Tr. 174.)

On January 22, 1998, Randie underwent a psychological-educational assessment at Fanning Middle School. (Tr. 130-38.) Marilyn Maldonado, school psychologist; Pat LeSage, social worker; and Brenda Evans, counselor, were the evaluators for the

assessment. (Tr. 130.) Jo Ann Perkins, administrator; Arnita George, teacher; Denise Hughes, social worker; and Ms. White, Randie's SLCC counselor, also participated in the assessment. (Tr. 140.) It was noted that in November 1994, Randie was administered the Cognitive Abilities Test (COGAT) wherein he received a verbal score of 65, a nonverbal score of 68 and a quantitative score of 61. A score of 100 was considered to be average. (Tr. 131.) It was further noted that achievement scores obtained in an SAT test administered in April 1997 indicated severe deficits in math and language, with a total basic score at the third percentile. Finally, it was noted that Randie was administered the WIAT (Weschler Individual Achievement Test) in November 1997 wherein scores of 79, 65 and 62 were obtained in the areas of reading, written language and arithmetic, respectively. It was noted that such results showed Randie to be achieving at a level consistent with his cognitive ability. (Tr. 132.) During the current assessment, Randie was administered the WISC-III wherein Randie received a verbal IQ score of 54, a performance IQ score of 64, and a full scale IQ score of 55. The examiner determined such scores to be a minimal estimate of Randie's cognition due to his test-taking behaviors, his application to the academic environment, and his excessive absences and tardiness from school which seem to have impacted his level of cognition. (Tr. 131.) Based on the assessment, it was determined that Randie displayed numerous

weaknesses in the areas of basic reading skills, reading comprehension, written expression, math calculation, and math reasoning. (Tr. 132-33.) Behavioral concerns were also noted, including the results of a Behavior Evaluation Scales evaluation completed in October 1997 which yielded a behavior quotient of 61, which is considered extremely deviant. It was noted that Randie's behavior patterns affecting educational performance included learning problems, interpersonal difficulties, inappropriate behavior, and physical symptoms/fears. (Tr. 134.) It was opined by Randie's teachers that Randie had made little or no success in school on account of Randie's behavior, lack of self-control and poor attendance. The examiners listed twenty-eight separate behavioral problems exhibited by Randie "which have occurred daily since 9-96 and are considered to be severe in terms of intensity in the educational setting[.]" (Tr. 135.) The examiners concluded:

Current evaluation results indicate that Randie functions in the mildly mentally retarded range of cognitive ability with comparable adaptive behavior. Individual achievement results indicate that he is presently performing far below current grade placement but consistent with cognitive ability. These results are consistent with class room work and observations.

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The testing environment was acceptable and the evaluation results obtained are considered to be a valid representation of Randie's current

level of functioning.

(Tr. 136.)

On February 11, 1998, Dr. Sherry Roskam reviewed Randie's medical records for disability determinations and determined Randie's impairments to be severe but that they did not meet, medically equal or functionally equal the severity of a Social Security Disability Listing. (Tr. 175-78.) Dr. Roskam determined Randie to have marked limitations in social functioning and less than marked limitations in cognitive/communicative functioning. Dr. Roskam opined that Randie did not have any other limitations. (Tr. 177.) Dr. Roskam explained that school records showed Randie to socialize well at school, but that he is rambunctious and playful. Dr. Roskam noted Randie not to do classroom work because he talks too much. Dr. Roskam noted a November 1997 psychological evaluation which indicated that Randie refused to go to school and that his IQ scores of 62/66/61 were low estimates on account of "lots of scatter." Dr. Roskam noted the diagnosis of oppositional defiant disorder but opined that there was no evidence of mental retardation. (Tr. 178.)

Randie was assigned to the St. Louis Public Schools special education program on March 24, 1998. (Tr. 142.) It was noted that Randie had been diagnosed as mildly mentally retarded. (Tr. 143.) The Individual Education Program completed for Randie noted that Randie

is functioning in the mentally Handicapped Range of cognition with commensurate adaptive behavior. He is unable to make the slightest academic progress utilizing the general education curriculum due to difficulty in interpersonal relationships, disruptive/impulsive behaviors, and non-participation in the instructional process. Randie requires a highly structured setting with a functional academic curriculum with a focus on job training in order to maximize success.

(Tr. 147.)

Randie and his mother appeared at St. Louis Mental Health Services on March 27, 1998, for assessment of Randie's eligibility for treatment. (Tr. 200-10.) Randie's mother reported extreme mood swings with excessive anger at which time Randie screams and throws things. (Tr. 200.) It was noted that Randie has trouble at school, difficulty at home, few friends, and bad grades. (Tr. 201.) Randie reported that he had "two sides" and that medicine does not help him. (Tr. 201.) Randie's mother reported that Randie continues to be traumatized by his sister's death and that he had witnessed beatings by his father as well as his mother's drug abuse. Randie's mother reported that Randie does not get along with his stepfather and that they engage in many arguments. (Tr. 202.) Mental status examination showed Randie to have poor eye contact and to cover his face. Randie's cooperation was noted to be fair, but his speech mumbled. Randie's flow of thought was unremarkable. His affect was noted to be pleasant but

disinterested. (Tr. 206.) Randie denied any hallucinations, delusions, or suicidal or homicidal ideations. (Tr. 207.) It was noted that Randie had no treatment history except for in-home therapy which resulted in no behavioral changes. The evaluator's impressions were that Randie had had a learning disability for years but that he was only recently diagnosed. Randie's mother reported that she delayed in having Randie diagnosed on account of her drug use and that she did not care at the time. It was opined that Randie's frustrations in school have led to outbursts both at school and at home, and that some of the anger expressed at home may be directed toward his mother. It was noted that Randie was recently transferred to a school that may meet his needs more appropriately. (Tr. 208.) It was recommended that Randie receive individual counseling to discuss his traumatic experiences. Randie was provisionally diagnosed with conduct disorder and mild mental retardation. Randie's GAF score was measured to be 48. (Tr. 209-10.)

On March 31, 1998, the Missouri Department of Mental Health notified Randie's mother that Randie was determined to be eligible to receive services from the Division of Mental Retardation and Developmental Disabilities. (Tr. 196.)

On April 29, 1998, Randie underwent a medical and psychiatric assessment at Barnes-Jewish Hospital for the St. Louis Mental Health Division. (Tr. 265-66.) Dr. Eleatha L. Surratt, a

child psychiatrist, reported Randie's relevant history to include long-term academic difficulties, major traumatic experiences including witnessing the fatal accident of his sister and witnessing his father's physical abuse of his mother, and experiencing a skull fracture when he was nine years of age upon falling from a roof. Dr. Surratt noted Randie to have been diagnosed with mild mental retardation although specific testing results were not yet available to her. Randie's mother reported to Dr. Surratt that Randie was very oppositional with aggressive behavior directed against his younger brother and that Randie speaks frequently of suicidal ideation. (Tr. 265.) Dr. Surratt noted Randie to exhibit regressive behavior of a bizarre nature during the session, including turning his back on the examiner, making nonsense sounds to himself, and lying on the floor under the chair. Dr. Surratt questioned whether such behavior exhibited psychotic symptoms or whether it was perhaps negative attention-seeking behavior. Dr. Surratt noted Randie to be somewhat limited cognitively but determined it not to be clear whether such behavior was attributable to mental retardation. In her assessment, Dr. Surratt found Randie to have oppositional defiant disorder, conduct disorder by history, mild mental retardation by history, and a history of head injury with loss of consciousness. Dr. Surratt

recommended that Randie begin a trial course of Risperdal,² to which Randie responded that he would not take medication. Dr. Surratt scheduled Randie for a follow-up visit in two to four weeks so that she could attempt to further clarify his diagnosis. (Tr. 266.)

Randie visited Dr. Surratt on May 6, 1998, and reported that he did not like the taste of his medication. Dr. Surratt noted Randie to smile appropriately and to have minimal, soft speech. Randie was to continue on his medication and to return in two weeks. Randie's scheduled appointment for May 20, 1998, was cancelled. (Tr. 198.)

Randie visited Dr. Surratt on June 11, 1998, who noted Randie to have refused his medications and to display aggressive behavior at school and at home. During the session with Dr. Surratt, Randie would sit or lie on the floor with his face turned away or hidden. Dr. Surratt noted Randie to make silly regressive sounds and phrases. Randie was to continue taking Risperdal. (Tr. 199.)

Randie was admitted to St. Anthony's Medical Center on June 18, 1998, for evaluation of "out of control behavior." (Tr. 269.) Randie's history of oppositional behavior was noted, including anger outbursts, fighting at school and with his brother,

²Risperdal is indicated for the management of the manifestations of psychotic disorders. Physicians' Desk Reference 1580 (55th ed. 2001).

and refusing to take his medications. Randie's mother reported that Randie will only take his medications when she calls the police to the home. It was noted that Randie was mildly mentally retarded and had compromised concentration. (Tr. 269.) It was noted that Randie was in the ninth grade at Career Academy and that his most recent report card was good. Randie was employed in housekeeping and it was noted that his job performance was "good 'so far.'" (Tr. 333.) Mental status examination showed Randie to be alert and cooperative. Psychomotor activity was noted to be decreased. Content of thought was negative to hallucinations or delusions. Randie denied suicidal or homicidal ideations. It was noted that Randie was apparently homicidal when he did not take his medications. Randie had no formal thought disorder and it was noted that his speech was normal in rate and rhythm. Randie's judgment was noted to be within normal limits. Dr. Eyerman diagnosed Randie with major depressive disorder with intermittent explosive disorder; mild mental retardation, learning disabled; and history of skull fracture. Dr. Eyerman determined to reinstitute Risperdal and to begin Tenex.³ (Tr. 270.) Randie was also

³Tenex is indicated in the management of hypertension. Physicians' Desk Reference 2719 (55th ed. 2001).

administered Trazodone,⁴ Vistaril⁵ and Serzone.⁶ (Tr. 274, 279-80.) Individual, group and family therapy sessions were also initiated. (Tr. 277.) During his admission at St. Anthony's, Randie was compliant with his medications and behaved appropriately in therapy sessions. Randie reported to be in a good mood and denied any thoughts of wanting to harm others. (Tr. 278.) Randie denied thoughts of suicidal ideation but reported that he sometimes thought of death. Randie was discharged from St. Anthony's on June 22, 1998. (Tr. 281.) Randie's discharge diagnosis was depression psychosis - severe; intermittent explosive disorder; history of noncompliance; mild mental retardation; and generalized anxiety disorder. (Tr. 347.) Randie's discharge medications were Tenex and Serzone. (Tr. 324.) Rehospitalization risk factors were noted to be history of medication noncompliance, dysfunctional home environment, severe and persistent impairment, and chronic and severe mental impairment. It was noted that Randie's discharge needs included assistance from a community caseworker and psychiatrist. (Tr. 325.)

⁴Trazodone is indicated for the treatment of depressive illnesses. Phillip W. Long, M.D., *Internet Mental Health* (1995-99) <http://www.mentalhealth.com/drug/p30-d03.html#Head_2>.

⁵Vistaril is a sedative used for the symptomatic relief of anxiety and tension associated with psychoneurosis. Physicians' Desk Reference 2541 (55th ed. 2001).

⁶Serzone is indicated for the treatment of depression. Physicians' Desk Reference 1019 (55th ed. 2001).

Randie visited Dr. Surratt on July 22, 1998, who noted Randie to be refusing his medication. Dr. Surratt also noted Randie to have broken his hand but to have "sawed" off the cast. Dr. Surratt noted Randie to have much more spontaneous interaction with some playful opposition and borderline oppositional defiant disorder. Dr. Surratt diagnosed Randie with mild mental retardation per testing, and history of head injury with loss of consciousness. Dr. Surratt deferred any diagnosis of oppositional defiant disorder and encouraged Randie to take Risperdal. Randie was to return for a follow-up visit in three to four weeks. (Tr. 267.)

Randie was admitted to Lutheran Medical Center on August 15, 1998, because of his anger. Randie's mother brought Randie to Lutheran when Randie threw a rock through a window of their home. Randie stated that he has a bad temper, gets out of control and throws things. Randie's previous admission to St. Anthony's was noted. It was also noted that Randie was administered Ritalin⁷ while at St. Anthony's but that the medication was discontinued due to Randie's inability to retain the medication in that it caused him to vomit. (Tr. 350.) Randie reported that he does not take his medications because they do not help his condition and that he took his medications at St. Anthony's only to get out of there.

⁷Ritalin is used for the treatment of attention deficit disorders and narcolepsy. Physicians' Desk Reference 2206 (55th ed. 2001).

(Tr. 353.) Randie was noted to be in the tenth grade and to make good grades, "mostly B's." (Tr. 350.) Mental status examination showed Randie to have mild psychomotor retardation with logical speech and satisfactory communication. It was noted that upon admission, Randie wanted to hurt his brother and mother but that he no longer had such thoughts since initial examination. Randie denied suicidal ideation. Randie was noted to have average intelligence and average memory with no impairment of judgment. Randie's assets were noted to be good intelligence and good verbal skills. (Tr. 350.) Randie's principal diagnosis was major depressive affective disorder, recurrent episode, severe, without psychotic behavior; with a secondary diagnosis of intermittent explosive disorder. (Tr. 351.) Randie's GAF was noted to be 25. Dr. N. Soorya recommended that Randie continue his medications as prescribed by Dr. Surratt with psychotherapy, group therapy and activities therapy. Dr. Soorya noted Randie to need one week of inpatient care. (Tr. 352.) During Randie's admission to Lutheran, Randie was noted to be pleasant and compliant at times, and explosive, argumentative and oppositional at other times. (Tr. 354-56.) At one point Randie threatened the staff and threatened to blow up the hospital. (Tr. 356.) On August 17, 1998, it was noted that Randie would be released soon to his mother, but that Randie reported that he feels abandoned by his mother. (Tr. 358.) Randie reported that he does not feel in control of his anger

toward his mother. (Tr. 359.) It was noted that Randie suffered no side effects from his medications. (Tr. 360.) Randie was discharged from Lutheran on August 18, 1998. Upon discharge, it was noted that Randie felt good and could control his temper with his present medications. (Tr. 362.)

IV. The ALJ's Decision

The ALJ found that Randie had never engaged in substantial gainful activity. (Tr. 21.) The ALJ found that Randie had oppositional defiant disorder, mild depression and low intellectual functioning. The ALJ determined Randie's mother and step-father not to be fully credible. The ALJ determined Randie not to have a medical impairment listed in Part B or Part A of Appendix 1, Subpart P, Regulations No. 4. The ALJ also determined Randie not to have a medically-established impairment, or combination of impairments, medically or functionally equal to any impairment listed in Part B or Part A of Appendix 1, Subpart P, Regulations No. 4. Finally, the ALJ found Randie not to have a medically determinable physical or mental impairment, or combination of impairments, which resulted in marked and severe functional limitations. As such, the ALJ found Randie not to be under a disability at any time through the date of his decision. (Tr. 22.)

V. Discussion

A claimant under the age of eighteen is considered disabled and eligible for Supplemental Security Income under the

Social Security Act if he "has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(C)(i).

The Commissioner is required to undergo a three-step sequential evaluation process when determining whether a child is entitled to SSI benefits. First, the Commissioner must determine whether the child is engaged in substantial gainful activity. If not, the Commissioner must then determine whether the child's impairment, or combination of impairments, is severe. Finally, if the child's impairment(s) are severe, the Commissioner must determine whether such impairment(s) meet, medically equal or functionally equal the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of the regulations.⁸ 20 C.F.R. § 416.924(a). If the impairment(s) meet or equal a Listing, the child is disabled. If not, the ALJ must find the child not to be

⁸If a child's impairment does not meet or equal a listed impairment, the Commissioner will assess all functional limitations caused by the child's impairment to determine whether the functional limitations are disabling. 20 C.F.R. § 416.926a. Functional equivalence is measured in several ways. If the child's condition results in extreme limitations in one or more specific functions which are described as criteria for disability in the listed impairments, the child will be found to be disabled. 20 C.F.R. § 416.926a(b)(1). In addition, if a child's condition results in "extreme" limitation of functioning in one broad area of functioning, or "marked" limitation of functioning in two broad areas of functioning, the child will be found to be disabled. 20 C.F.R. § 416.926a(b)(2).

disabled. Fuget v. Massanari, 144 F. Supp. 2d 1103, 1110 (S.D. Iowa 2001).

The Commissioner's findings are conclusive upon this Court if they are supported by substantial evidence. 42 U.S.C. § 405(g); Young v. Shalala, 52 F.3d 200 (8th Cir. 1995) (citing Woolf v. Shalala, 3 F.3d 1210, 1213 (8th Cir. 1993)). Substantial evidence is less than a preponderance but enough that a reasonable person would find it adequate to support the conclusion. Briggs v. Callahan, 139 F.3d 606, 608 (8th Cir. 1998). In evaluating the substantiality of the evidence, the Court must consider evidence which supports the Commissioner's decision as well as any evidence which fairly detracts from the decision. Id. Where substantial evidence supports the Commissioner's decision, the decision may not be reversed merely because substantial evidence may support a different outcome. Id.

Plaintiff argues that the Commissioner's decision is not supported by substantial evidence on the record as a whole in that the ALJ improperly weighed the medical evidence and failed to provide a rationale for according evidence from treating sources less weight than that from non-treating physicians. Plaintiff also contends that the ALJ failed to develop the record by not ordering additional testing to properly determine Randie's IQ. Finally, plaintiff argues that the ALJ failed to consider the combined effects of Randie's impairments.

A. Weight Given to Medical Evidence

In his opinion, the ALJ explicitly gave "great weight" to the opinions of Drs. Roskam and Anpacker, the agency physicians who examined only Randie's medical records (Tr. 18), and determined on the basis of such opinions that Randie was not under a disability. (Tr. 20-21.) The ALJ's opinion is entirely devoid of any meaningful discussion as to the treatment given and opinions rendered by Randie's counselors, treating physicians and school officials. Plaintiff argues that the ALJ failed to properly weigh the medical evidence and erred by failing to give any rationale for according the opinions of Randie's treating physicians less weight than that accorded the non-treating physicians. For the following reasons, plaintiff's argument is well taken.

The regulations require the Commissioner to give more weight to the opinions of treating physicians than other sources. 20 C.F.R. § 416.927(d)(2). A treating physician's assessment of the nature and severity of a claimant's impairments should be given controlling weight if the opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record. Id. This is so because a treating physician has the best opportunity to observe and evaluate a claimant's condition,

since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [a claimant's] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the

objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Id.

As such, evidence received from a treating physician must be given great weight with deference given to such evidence over that from consulting or non-examining physicians. See Thompson v. Sullivan, 957 F.2d 611, 614 (8th Cir. 1992); Henderson v. Sullivan, 930 F.2d 19, 21 (8th Cir. 1991).

When a treating physician's opinion is not given controlling weight, the Commissioner must look to various factors in determining what weight to accord the opinion. 20 C.F.R. § 416.927(d)(2). Such factors include the length of the treatment relationship and the frequency of examination, the nature and extent of the treatment relationship, whether the treating physician provides support for his findings, whether other evidence in the record is consistent with the treating physician's findings, and the treating physician's area of specialty. Id. Significantly, the regulations provide that the Commissioner "will always give good reasons in [the] notice of determination or decision for the weight [given to the] treating source's opinion." Id.

In the instant cause, the ALJ specifically accorded the opinions of the two non-examining physicians "great weight" without discussing or addressing the opinions of Randie's treating physician, Dr. Surratt. The Commissioner does not dispute that Dr. Surratt was Randie's treating physician. Although Dr. Surratt

examined and treated Randie continuously since he was accepted for treatment by the Department of Mental Health, the ALJ identified in his opinion only Randie's initial assessment by Dr. Surratt in April 1998. The ALJ's decision fails to demonstrate whether he gave any thoughtful consideration to Dr. Surratt's treatment of and opinions as to Randie's condition, and, as such, fails to comply with the regulations' mandate that the Commissioner give good reasons for the weight given a treating physician's opinion. Although the Commissioner argues in its brief here that substantial evidence on the record would support the ALJ's inferred determination to accord Dr. Surratt's opinions little weight, the undersigned notes that "[i]nitial determinations of fact and credibility are for the ALJ, and must be set out in the decision . . . ; [this Court] cannot speculate whether or why an ALJ rejected certain evidence." Jones v. Chater, 65 F.3d 102, 104 (8th Cir. 1995).

In addition, in determining a child-claimant's disability, the Commissioner must consider all relevant evidence which "may include medical evidence, school records, information from people who know [the claimant] and can provide evidence about [the claimant's] functioning -- such as [the claimant's] parents, caregivers, and teachers -- and other evidence that can help [the Commissioner] assess [the claimant's] functioning on a longitudinal basis." 20 C.F.R. § 416.924(f). A review of the ALJ's decision shows the ALJ to have wholly failed to address Randie's eight-month participation in Catholic Services for Children and Youth, with

unsuccessful results; Randie's one-year participation in St. Louis Caring Communities program, with unsuccessful results; Randie's in-house treatment at Youth-in-Need, with unsuccessful results; reports, teacher questionnaires and psychological-educational assessments from Fanning Middle School comprehensively detailing Randie's behavior and impaired cognitive functioning in the academic setting; the psychological evaluation performed for disability determinations; and Randie's admission to and treatment from St. Anthony's Medical Center. Such corroborating relevant evidence may support a determination that Randie suffers an impairment, or combination of impairments, which meets, medically equals or functionally equals the severity of a listed impairment. Although the ALJ may have considered and for valid reasons rejected such relevant evidence of Randie's longitudinal functioning, the ALJ's failure to address these matters leaves this Court unable to determine whether any such rejection was based on substantial evidence on the record as a whole. See Jones, 65 F.3d at 104. In such circumstances, the cause must remanded "to fill this void in the record." Id.

B. Failure to Develop the Record

Plaintiff argues that the ALJ erred when he failed to develop the record in that he should have, but failed to, order additional testing to obtain a valid IQ score for Randie.

An ALJ has the basic obligation to develop a full and fair record at disability hearings, even if the claimant is represented by counsel. Battles v. Shalala, 36 F.3d 43, 44 (8th

Cir. 1994). "There is no bright line test for determining when the [Commissioner] has . . . failed to develop the record. The determination in each case must be made on a case by case basis." Id. at 45 (internal quotation marks and citations omitted). When the evidence before the ALJ does not supply enough information to permit him to make an informed decision, the ALJ may fulfill his duty to develop the record by ordering additional examinations. 20 C.F.R. § 416.917; Boyd v. Sullivan, 960 F.2d 733, 736 (8th Cir. 1992).

In the instant cause, the ALJ determined not to credit Randie's IQ scores obtained at the November 1997 consultative examination inasmuch as Randie "was not trying . . . and the scores are an underestimate of his true abilities." (Tr. 18, 19.) The ALJ thus determined Randie not to meet the requirements of Section 112.05 of the Listings inasmuch as Randie did not have a valid IQ score within the range required.⁹ As noted above, however, the ALJ wholly failed to discuss the Fanning Middle School psychological-educational assessment conducted in January 1998 wherein Randie obtained a verbal IQ score of 54, a performance IQ score of 64, and a full scale IQ score of 55. In addition, the Fanning examiners determined the evaluation results to be a valid representation of

⁹To be considered disabled under Section 112.05(C), a claimant must have a valid verbal, performance or full scale IQ score of 59 or less. To be considered disabled under Section 112.05(D), a claimant must have a valid verbal, performance or full scale IQ score of 60 through 70, and a physical or other mental impairment imposing additional and significant limitation of function.

Randie's current functioning. Inasmuch as the ALJ failed to discuss this apparent conflict in the evidence or make any effort to reconcile these reports, it cannot be said that the ALJ's determination that Randie failed to meet the Listing was based on substantial evidence on the record as a whole. See Mitchell v. Bowen, 827 F.2d 387, 389 (8th Cir. 1987) (ALJ's duty to fully develop record assured when medical reports reconciled or interrogatories propounded to examiners to obtain a more substantial opinion as to claimant's capabilities). This is especially true here where there existed in the record other evidence corroborating the November 1997 IQ scores, including Randie's January 1998 IQ scores (determined by the exam administrators to be valid) and Randie's consistent daily activities and behaviors as reported by teachers, counselors and parents. See Clark v. Apfel, 141 F.3d 1253, 1255 (8th Cir. 1998); Popp v. Heckler, 779 F.2d 1497, 1499 (11th Cir. 1986).

The ALJ determined the IQ scores obtained in November 1997 not to be valid and went on to determine that, therefore, Randie did not meet the Listing requirement for Mental Retardation under Section 112.05. In the absence of sufficient information upon which to make such a determination, however, i.e., an IQ score determined by the ALJ to be valid, the undersigned is uncertain how the ALJ could conclusively determine on the evidence that Randie was not disabled under the Listing. Upon remand, the Commissioner should "reopen the case 'until the evidence is sufficiently clear to make a fair determination as to whether [Randie] is disabled or

not.'" Thorne v. Califano, 607 F.2d 218, 220 (8th Cir. 1979) (quoting Landess v. Weinberger, 490 F.2d 1187, 1189 (8th Cir. 1984)). See also Delrosa v. Sullivan, 922 F.2d 480, 484-85 (8th Cir. 1991).

C. Combined Effects of Impairments

Plaintiff argues that the ALJ erred in that he failed to consider the combined effects of Randie's impairments, and specifically, that the ALJ should have, but failed to, consider Randie's intellectual deficit, as demonstrated by his IQ scores, in combination with his behavior disorder.

The failure to consider the combined effects of physical and mental impairments "violates the Social Security Act and constitutes reversible error." Pratt v. Sullivan, 956 F.2d 830, 835 (8th Cir. 1992). See also Delrosa, 922 F.2d at 484; Bowen v. Heckler, 748 F.2d 629, 635 (11th Cir. 1984) ("it is the duty of the administrative law judge to make specific and well-articulated findings as to the effect of the combination of impairments and to decide whether the combined impairments cause the claimant to be disabled"). As set out above, the ALJ rejected Randie's claim of mental impairment without addressing significant medical and other relevant evidence and without resolving apparent conflicts in the evidence as to Randie's cognitive ability. Without undergoing any thoughtful analysis as to the existence and extent of Randie's mental impairment, it cannot be said that the ALJ fairly considered the combined effect of Randie's impairments. See Delrosa, 922 F.2d

at 484.

Therefore, for all of the foregoing reasons, the decision of the Commissioner is not supported by substantial evidence on the record as a whole. However, inasmuch as the record does not overwhelmingly support a finding of disability, an outright award of benefits by this Court is inappropriate. Buckner v. Apfel, 213 F.3d 1006, 1011 (8th Cir. 2000). Therefore, this cause should be remanded to the Commissioner for further proceedings. Upon remand, the parties should be allowed to supplement the record with any additional information which may assist the ALJ in making a determination as to whether Randie's impairments, both singly and in combination, render him disabled. In addition, the ALJ should appropriately review and discuss the entire record as it relates to Randie's impairments, accord appropriate weight to the evidence, and give good reasons for the weight given any opinion and/or report made by Randie's treating physicians and other relevant sources. Finally, the ALJ may wish to re-evaluate the current evidentiary record and order consultative examinations to assist in making the determination as to Randie's disability status.¹⁰ See Delrosa, 922 F.2d at 486.

Accordingly,

¹⁰The undersigned notes that Randie was awarded Supplemental Security Income benefits upon a subsequent application filed July 31, 2000, for the period commencing July 31, 2000. (See Pltf.'s Brief in Support of Complaint, Exh. A.)

IT IS HEREBY RECOMMENDED that the decision of the Commissioner be reversed and that this cause be remanded to the Commissioner for further proceedings.

The parties are advised that they have eleven (11) days in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).

UNITED STATES MAGISTRATE JUDGE

Dated this _____ day of August, 2001.